*THE HONOURABLE SRI JUSTICE V.V.S.RAO

+WRIT PETITION No.7470 of 2007

% 13-4-2007

B.Raghurami Reddy, S/o.Sri Venkata Swamy Reddy

...Petitioner

AND

$ Government of Andhra Pradesh, represented by its Secretary, Panchayat Raj & Rural Development Department, Secretariat, Hyderabad And others

...Respondents

! COUNSEL FOR PETITIONER: Mr.B.Adinarayana Rao

^ COUNSEL FOR RESPONDENTS 1 to 3: Government Pleader for Panchayat Raj

Counsel for Respondent No.4 : Smt.Ch.Veda Vani

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>HEAD NOTE:

? CASES REFERRED:

1. AIR 1966 SC 671
2. AIR 1971 SC 1093
3. (1988) 4 SCC 1
4. AIR 1966 SC1669
5. AIR 1999 SC 2583
6. AIR 2000 SC2783

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Between:

B.Raghurami Reddy, S/o.Sri Venkata Swamy Reddy

… Petitioner

AND

Government of Andhra Pradesh, represented by its Secretary, Panchayat Raj & Rural Development Department, Secretariat, Hyderabad

And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.7470 of 2007

ORDER:

The petitioner became highest bidder in the auction conducted by the fourth respondent in October 2005 for leasing out fishing rights in Devaracheruvu tank of Gudupalle Gram Panchayat. Petitioner's bid was Rs.32,000/-. He alleges that he spent Rs.5.00 lakhs for fish seed, besides another Rs.5.00 lakhs for developing fish. Fish was to be harvested in June 2006. However, due to heavy inflows into Papagni river, water level in tank rose and rendered harvesting impossible. He approached fourth respondent for extension of lease for a period of five years. The Gram Panchayat passed resolution on 18.5.2006 extending lease for 1416 Fasli subject to enhancement by 10% over and above the auction amount. The petitioner statedly paid Rs.35,200/- on 12.7.2006. When the fourth respondent sought confirmation from the second respondent, the matter was kept pending. The petitioner filed W.P.No.19412 of 2006 seeking a direction to second respondent to confirm extension of lease by the Gram Panchayat. Gram Panchayat submitted that documents filed by the petitioner are fabricated. Therefore, the said writ petition was closed on 16.10.2006. The second respondent thereafter obtained a report from third respondent and passed orders on 04.10.2006 extending lease subject to enhancement of lease amount by 33%. Petitioner paid difference amount of Rs.7,360/- to the Gram Panchayat. In the meanwhile elections were held to Gram Panchayat and new body took charge. .

The Government - first respondent herein; issued memo No. 20208/Pts.IV/A2/2006-2, dated 24.10.2006 informing that Sarpanch,

filed a revision petition against the orders of second respondent dated 04.10.2006. On the same day, notice of hearing was given to the petitioner by way of telegram. Ultimately the Government passed orders on 22.11.2006 setting aside the orders dated 04.10.2006 of second respondent. The same was questioned in W.P.No.24702 of 2006 before this Court. The said writ petition was allowed on 14.12.2006. Petitioner alleges that thereafter he did not hear anything in the matter. He was not well from 05.3.2007. On 09.3.2007, a clerk from the office of third respondent served a notice of hearing of the revision petition on 12.3.2007 at 5.00 pm. Petitioner sent a telegram seeking adjournment by four weeks. The Government again issued a notice on 28.3.2007 fixing hearing on 30.3.2007. Petitioner sent vakalat to his advocate to appear before first respondent and seek time. On 30.3.2007, his advocate appeared before the Government and sought time. But, Hon'ble Minister refused to grant time and called upon the advocate to argue the matter. The Government ultimately passed orders vide G.O.Rt.No.473, dated 02.4.2007 setting aside the order of the second respondent dated 04.10.2006 and further directed the District Collector to conduct fresh auction for fishing rights of Devaracheruvu. The said G.O. is assailed in the writ petition.

Learned Counsel for the petitioner submits that impugned order is vitiated by lack of opportunity as mandated by the proviso to Section 264(1) of the Andhra Pradesh Panchayat Raj Act, 1994 (the Act, for brevity). Secondly, he submits that though the Government is exercising quasi judicial functions in revisional matters, the impugned order is bereft of any reasons.

The proviso to subsection (1) of Section 264 of the Act mandates that Government shall not pass any order adverse in revision or review jurisdiction unless affected party had an opportunity of making representation. There cannot be two opinions that "opportunity to make representation" need not necessarily be "opportunity of being heard". Indeed in Indian Law, it is well settled that the requirement of "being heard" or "opportunity of hearing" would be complied with even if a person is asked to submit a representation or explanation in relation to quasi judicial exercise.

Whether personal hearing is part of natural justice in all circumstances? The two principal modes of hearing are oral or personal before adjudicatory authority and the other is hearing by way of a written representation. It is no doubt true that oral personal hearing is more advantageous to affected person because he can persuade the authorities to accept his point of argument. However, in all situations, oral personal hearing is not compulsory. As in the case of revision under Section 264 of the Act, an opportunity of making a representation is equally efficacious and it also amounts to "hearing".

However, it must be clarified that where a provision of law or a rule specifically provides for oral personal hearing, strict compliance is required. A reference may be made to **M.P. Industries Ltd. v Union of India**[1], **Union of India v Jyoti Prakash**[2], **Indru Ramchand Bharvani v Union of India**[3].

The decision in **M.P. Industries Ltd. v. Union of India** (supra) was concerned with interpretation of Rule 55 of Mineral Concession Rules, 1960, which provided that an opportunity to make a representation is to be afforded to a person who makes a petition for revision under Rule 54 before passing an order either affirming or modifying or setting aside the order. A question arose whether personal hearing should be afforded before passing an order. His Lordship Sri Justice Koka Subba Rao (as he then was) laid down.

> As regards the second contention, I do not think that the appellant is entitled as of right to a personal hearing. It is no doubt a principle of natural justice that a quasi judicial tribunal cannot make any decision adverse to a party without giving him an effective opportunity of meeting any relevant allegations against him. Indeed, Rule 55 of the Rules, quoted supra, recognize the said principle and states that no order shall be passed against any applicant unless he has been given an opportunity to make his representations against the comments, if any, received from the State government or other authority. **The said opportunity need not necessarily be by personal hearing. It can be by written representation. Whether the said opportunity should be by written representation or by personal hearing depends upon the facts of each case and ordinarily it is in the discretion of the tribunal. The facts of the present case disclose that a written representation would effectively meet the requirements of the principles of natural justice**.....
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> (emphasis supplied)

In **Union of India v Jyoti Prakash** (supra), the Supreme Court held that oral personal hearing is not an incident of "rules of natural justice". In the said case, the question was whether the President of India is required to give an oral personal hearing to the Judge of a High court while deciding the age of the Judge under Article 217(3) of the Constitution of India. Speaking for the unanimous Bench, His Lordship Chief Justice J.C.Shah opined as under.

> Article 217(3) does not guarantee a right of personal hearing. In a proceeding of a judicial nature, the basic rules of natural justice must be followed. The respondent was on that account entitled to make a representation. But it is not necessarily an, incident of the rules of natural justice that personal hearing must be given to a party likely to be affected by the order. Except in proceedings in courts, a mere denial of

> opportunity of making an oral representation will not, without more, vitiate the proceeding. **A party likely to be affected by a decision is entitled to know the evidence against him, and to have an opportunity of making a representation. He however cannot claim that an order made without affording him an opportunity of a personal hearing is invalid.**
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> (emphasis supplied)

In **Indru Ramchand Bharvani v. Union of India** (supra), the Supreme Court observed that a fair hearing has two justiciable elements that, an opportunity of hearing must be given and that opportunity must be reasonable. Whether a person has a fair hearing can be gone into by the Court and a Court's conscience shall be satisfied that an administrative tribunal charged with the duty of deciding a dispute has conformed to the principles of natural justice.

From the above case law, it may be taken that the following principles as are well settled. 'Personal hearing' is not always an adjutant or conjugant of *audi alteram partem.* Even if the delegatory legislation is silent, a person is entitled to an opportunity of making representation but the same, however, does not give any right of being heard personally, because the law treats an opportunity of making representation also as 'personal hearing'. When parent or delegated legislation excludes 'personal hearing', it is not permissible for the Court to read into such Rule as an opportunity of being heard by the authority. Even where, the legal provision contains a clause, 'such enquiry as deemed fit', the discretion vests with the decision maker whether or not to afford an opportunity of being heard. These principles are also, however, subject to newly emerged rule, that unless and until prejudice is pleaded and proved, violation of natural justice would not always and in all circumstances render the decision a nullity and illegality. (see **State Bank of Patiala v S.K. Sharma**[4] **M.C.Mehta v Union of India**[5] and **Aligarh Muslim University v Mansoor Ali Khan**[6])

When the fifth respondent submitted a revision petition, Government by order dated 22.11.2006 set aside the order of District Collector. This Court in W.P.No.24702 of 2006 invalidated Government Order on the ground that the first respondent failed to comply with statutory requirement under the proviso to Section 264 (1) of the Act. The reason was that the petitioner had no reasonable opportunity. Thereafter the Government issued notice of hearing vide memo No.4511/Pts.IV/A2/2007-1, dated 01.3.2007. The petitioner received the same on 09.3.2007 through the clerk of the office of the Divisional Panchayat Officer. Hearing was to take place on

12.3.2007. The petitioner did not attend the hearing. He allegedly sent a telegram requesting for adjournment on the ground that he was suffering from cerebral malaria and was taking treatment in Balaji Nursing Home, Madanapalle from 05.3.2007. The first respondent again issued a notice, which was received by the petitioner on 28.3.2007, fixing the date of hearing as 30.3.2007. Instead of filing representation discovering objections, petitioner's advocate filed a memo to the effect that petitioner is undergoing treatment at Balaji Multi-speciality Hospital, Madanapalle, for cerebral malaria and that he requires certain documents. Adjournment of six weeks was sought. In their discretion, the Government declined to grant adjournment and proceeded with the revision based on the record. These facts are admitted in the affidavit accompanying the writ petition.

Reverting back to Section 264(1) of the Act, it empowers the Government to call for and examine the record, any authority in respect of any proceeding to satisfy themselves as to regularity, correctness, legality or propriety of the decision or orders passed by such authority. It nowhere contemplates 'personal hearing' but proviso requires an opportunity of making representation. In this case, after disposal of W.P.No.24702 of 2006, Government issued memo dated 01.3.2007 informing the petitioner and respondents 2, 3 and 5 that Hon'ble Minister (PR) has desired to hear the case on 12.3.2007. In spite of granting opportunity twice, petitioner did not avail the same. He sought adjournment on the ground that he was undergoing treatment for cerebral malaria. If that be so when the petitioner engaged an advocate nothing prevented such advocate to proceed with the case. The learned counsel, who appeared before revisional authority, allegedly filed a Memo on 30.03.2003 informing that the petitioner is undergoing treatment for cerebral malaria at Hospital in Madanapalle and requested for six weeks time for filing counter. He also requested to furnish necessary documents. Along with the writ petition, the petitioner annexed a certificate issued by Balaji Multi-speciality Hospital to that effect. There is not even whisper in the affidavit accompanying the writ petition, that the petitioner's counsel produced such certificate before the Honourable Minister. Be that as it is, the enquiry into the revision was closed and the impugned order was passed.

The impugned Government Order was issued allowing the revision petition filed by fifth respondent observing as under.

> Again the case was heard on 30.03.2007 District Panchayat Officer, Chittoor, Sri A.Gowtham Reddy, Sarpanch and Sri B.Raghurami Reddy was represented by his counsel have attend the meeting.
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> Sri B.Raghurami Reddy was given thrice opportunity to attend the hearing but he did not attend the hearing so far. But he is

> changing the counsel every time and requesting for extension of time. With the result Sri B.Raghurami Reddy is continuing fishing from the Devaracheruvu causing loss to the Gram Panchayat. His counsel has attended the hearing on 30.03.2007 and requested for extension of time again.

A reading of the above would show that the petitioner was given opportunity thrice to attend hearing, but he did not attend the hearing but he was changing the counsel every time and requesting for extension of time and due to this the Gram Panchayat is incurring loss. Again this aspect of the matter is not adverted to in the writ affidavit. From this, it is reasonable to draw an inference that the Government were aware of the attitude of the petitioner in seeking adjournment and changing the Lawyer for extension of time. In such a case, what more reasons the Government are expected to give while allowing the revision petition of the fifth respondent? When a party to a judicial or quasi judicial proceedings is absent or adopting such delaying tactics, in an application for judicial review he cannot be heard to complain that the order impugned is bad for want of reasons. The submission that opportunity was not given is also misconceived. This Court is convinced that adequate opportunity was given and the Government were right in coming to the conclusion that by adopting one method or the other, the petitioner went on carrying on fishing in Devaracheruvu even after expiry of lease. The petitioner paid a meager sum of Rs.32,000/- for fishing rights and even according to his own admission, he left feed seed costing about Rs.5 lakhs. The loss that would be caused to Gram Panchayat can as well be imagined. The impugned order does not suffer from any infirmity or illegality.

The writ petition, for the above reasons, is dismissed. No costs.

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(**V.V.S.RAO, J**)

April 13, 2007.
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[1] AIR 1966 SC 671

[2] AIR 1971 SC 1093

[3] (1988) 4 SCC 1

[4] AIR 1996 SC 1669

[5] AIR 1999 SC 2583

[6] AIR 2000 SC 2783